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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of the)
Communications Act of 1934, as amended)

CC Docket No. 96-149

and)

Regulatory Treatment of LEC Provision)
of Interexchange Services Originating in the)
LEC's Local Exchange Area)

FURTHER COMMENTS

Teleport Communications Group Inc. ("TCG") hereby submits its Further
Comments on the Commission's Notice of Proposed Rulemaking in the captioned
proceeding.^{1/}

I. INTRODUCTION

In its initial Comments in this proceeding, TCG asserted that regulations
must be established in this proceeding to ensure that competition in the local
exchange and interexchange service markets continues to thrive once the Regional

^{1/} Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-308, Notice of Proposed Rulemaking, released July 18, 1996 ("NPRM"). See also Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-308, Order, released August 9, 1996 (extending time for comments on independent LEC issues to August 29, 1996).

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Bell Operating Companies enter the interLATA market in their local service regions. The safeguards intended to protect competition are required because of RBOC control over bottleneck facilities, which can then be used to extract monopoly rates from competing carriers dependent on these facilities. This same concern extends to independent local exchange carriers ("independent LECs") who are just as likely to control bottleneck facilities and therefore, possess market power. For this reason, the same safeguards that are adopted with respect to RBOCs should likewise be applied to independent LECs.

II. INDEPENDENT LECs MUST BE SUBJECT TO THE SAME NON-DISCRIMINATION AND STRUCTURAL SAFEGUARDS AS RBOCS

The threat that independent LECs will cross-subsidize and discriminate to the detriment of competitive local exchange carriers ("CLECs") exists by virtue of their control over bottleneck facilities. As the Commission has acknowledged, "separation may be necessary in order to minimize the potential that an independent LEC could use its control of bottleneck facilities to improperly shift costs or discriminate against interexchange competitors."^{2/} Thus, it is essential that the Commission implement its proposal to require separation between an independent LEC's interstate, domestic, interexchange operations and its local exchange operations.^{3/} The Commission should also require independent LECs to

^{2/} Id.

^{3/} See NPRM at ¶ 158.

adhere to the requirements imposed upon RBOCs to safeguard against discriminatory treatment. To this end, TCG proposes that the four prong approach it suggested in its initial comments apply to independent LECs and their affiliates, as well as RBOCs and their affiliates.

First, it remains a priority that the Commission clarify that an independent LEC affiliate that provides in-region, interLATA service may not also provide local exchange service. Second, and equal in importance, non-discrimination safeguards must include reporting requirements by which competitors and the Commission can analyze objectively the independent LEC's service record with competitors as compared to itself or its affiliates. Third, structural safeguards that are comparable to those established in the Competitive Carrier proceeding and that require a strict separation between the parent and the affiliate must be retained for independent LECs. Finally, an expedited complaint process must be implemented to address claims that service to a competitive carrier is of lower quality in, for example, timing and pricing than to itself or its affiliate. Only by promulgating these regulations will the Commission provide sufficient regulatory safeguards to protect against cross-subsidization and discrimination.

A. Nondiscrimination Safeguards

The Commission has correctly recognized that "given the BOCs' and independent LECs' current retention of monopoly control over bottleneck facilities, a BOC or an independent LEC can exercise market power in either all or none of these point-to-point markets originating in the areas where the BOC or independent

LEC controls local exchange facilities."^{4/} In fact, these entities have a history of using their ordering and provisioning processes to impose delays upon CLECs that are attempting to provide competitive local service. Such delays discourage customers from subscribing to CLEC services. For example, ILECs have insisted upon manual ordering processes for CLEC requests, while using faster and more efficient electronic ordering processes for their own customers. Therefore, it is reasonable to assume that, left unchecked, such preferential practices will be extended to independent LEC affiliates to the detriment of CLECs.

TCG recommends that the quarterly reporting requirements that are proposed for RBOCs should be implemented also with respect to independent LECs. The quarterly reports must in turn be analyzed based upon objective performance standards. The reporting entity will provide data in the quarterly report detailing the following: (1) as measured from the time of the request to delivery of the service, the length of time taken to provide telephone exchange service and exchange access to itself and its affiliates; (2) all facilities, services, or information provided to its affiliates and the terms and conditions under which they were provided; (3) all charges made directly or imputed to itself for providing an affiliate with telephone exchange service and exchange access; (4) the rates, terms, and conditions under which it made available to its affiliate any interLATA or intraLATA facilities or services; and (5) the information required by items (1) through (4), but with respect to all or some representative group of the

^{4/} NPRM at ¶ 125.

interconnecting CLECs. These reporting requirements provide the framework by which outside parties, and more importantly, this Commission and state commissions, to assess whether or not the independent LECs are providing service and access to CLECs equal to that provided to affiliates. In addition, objective performance standards that include required installation intervals, mean time to repair, service availability standards, and similar performance criteria also must be implemented, against which the information provided in quarterly report can be compared.

B. Structural Safeguards

The "post-entry" safeguards that will encourage the RBOCs to open their territories to competition and should prevent monopoly abuses afterward must also be extended to independent LECs. Without such protections, independent LECs, just as the RBOCs, would be free to use their largely non-competitive services (local exchange) to internally cross-subsidize the service in which they faced immediate competition (interLATA long-distance). Therefore, the Commission must implement regulations requiring separate affiliates to operate with complete separation from the independent LEC, prohibiting the RBOC and affiliate from sharing officers and employees, and establishing that the affiliate must stand on its own credit history and not the parent RBOC's.^{5/}

^{5/} See TCG's Comments, CC Docket No. 96-149, filed August 15, 1996, at 18-21.

C. Enforcement


To enforce the safeguards recommended here, the Commission should implement a separate, expedited complaint process by which competitors can raise and address violation of the structural separations between independent LECs and their affiliates and discrimination by an independent LEC in favor of their affiliates.^{9/}

III. CONCLUSION

For these reasons, TCG requests that the Commission adopt the proposals presented in these Comments to preserve the potential for a level competitive playing field in all telecommunications markets.

Respectfully submitted,

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^{9/} Id. at 21-23.

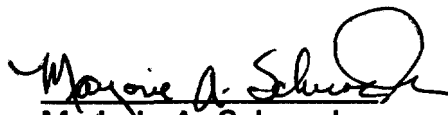
CERTIFICATE OF SERVICE

I, Marjorie A. Schroeder, do hereby certify that a copy of the foregoing
Further Comments of Teleport Communications Group Inc. was sent by hand
delivery on this 29th day of August, 1996, to the following:

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